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Graeme Andrew Jackson

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EXAMINER

WAITS, ALAN B

ART UNIT

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4112

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/519,864	<b>Applicant(s)</b> JACKSON, GRAEME ANDREW	
	<b>Examiner</b> Alan B. Waits	<b>Art Unit</b> 4112	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 28-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/29/2004</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Specification***

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “stop means disposed on a transmission system” of claim 44 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. Claim 56 objected to because of the following informalities: “and lever” (line 4) should be “and a lever” and “plurality positions” (line 8) should be “plurality of positions”. Appropriate correction is required.

Claim 60 is objected to because of the following informalities: “stop member is prevents” should be “stop member prevents”. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 28-63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant uses the term “selectively” in claims 28, 33, and 56. It is unclear what Applicant meant by “selectively applying” or “selectively engaging”.

Applicant claims a pivoting member (clm 28) and a pivoting means (clm 29). It is unclear if these two elements are the same element, or if these two elements are different elements.

Applicant claims a biasing member (clm 28) and a biasing means (clm 29). It is unclear if these two elements are the same element, or if these two elements are different elements.

6. The term "generally" in claims 32, 34, 35, 36, 37, 53, 57 is a relative term which renders the claim indefinite. The term "generally" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The phrases generally non-traverse, generally parallel, generally in a direction, and generally coaxial are rendered indefinite.

7. The term "substantially" in claim 46 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The second biasing member is rendered indefinite by the phrase "substantially the same".

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 28-42, 44-54, and 56-62 are rejected under 35 U.S.C. 102(b) as being anticipated by Katayama USP 4543842.

Katayama discloses a similar device comprising a(n):

Re clm 28:

- Housing (4, fig 3)

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- Lever (1, fig 3) with a longitudinal axis, at least partially disposed within said housing
- Pivoting member (3, fig 3) in operational communication with said lever being adapted to facilitate pivoting of said lever into a plurality of positions
- Biasing member (8, fig 3) disposed proximate said lever, said biasing member selectively applying a biasing force to said lever moving said lever into at least one biased position (cl 4, line 4-6)

Re clm 29:

- Said pivoting member further comprises a pivoting means (2, fig 3) adapted to facilitate pivoting of said lever

Re clm 30:

- Said biasing member further comprises a biasing means (8, fig 3) operable to bias said lever into at least one biased neutral position (cl 4, line 4-6)

Re clm 31:

- Biasing member is disposed on said lever coaxially therewith (1 and 8, fig 3)

Re clm 32:

- Biasing member operates in a generally non-traverse direction relative to said longitudinal axis of said lever (as shown in fig 3 where biasing member, 8, acts in a direction of the longitudinal axis of lever, 1)

Re clm 33:

- Biasing member selectively applies a biasing force operable to oppose displacement of said lever in any direction (as shown in figure 7)

Re clm 34:

- Housing includes a longitudinal axis, said applied biasing force is generally in a direction of said longitudinal axis of said housing (as shown in fig 3 where biasing member, 8, acts in a direction of the longitudinal axis of lever, 1, which is also in the longitudinal direction of the housing, 4)

Re clm 35:

- Biased position, said longitudinal axis of said lever is generally parallel to a direction of said biasing force (as shown in fig 3 where biasing member, 8, acts in a direction of the longitudinal axis of lever, 1)

Re clm 36:

- Said biasing member further includes a first element (21, fig 8) and a second element (9, fig 8) adapted to be displaceable in a direction generally parallel to said longitudinal axis of said lever (wherein the second stop means is *capable of* being displaced), a third element (26, fig 8) being adapted to be fixed relative to said lever, and a biasing element (19, fig 8) being disposed intermediate said second element and said third element (wherein the biasing element is located between the second element and the third)

Re clm 37:

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- Lever extends through said first element, said second element, said third element, and said biasing element from a generally coaxial arrangement therewith (as shown in fig 8)

Re clm 38:

- Biasing element is a spring (as shown in fig 8)

Re clm 39:

- First element is adapted to engage with a stop means (7, fig 8)

Re clm 40:

- Stop means is operable to prevent pivotal displacement of said first element in at least one direction (wherein 7 prevents 21 from sliding up)

Re clm 41:

- Stop means is disposed on an inner wall of said housing (as shown by fig 8)

Re clm 42:

- Stop means includes a region of reduced diameter of said inner wall (as shown in fig 8 stop means, 7, has a smaller diameter than the inner wall of housing, 4)

Re clm 44:

- Stop means is disposed on a transmission system with which said lever is in operation communication (wherein the whole system is a transmission system, and therefore, the stop is disposed on said transmission system, fig 8)



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Re clm 45:

- Second biasing member (19, fig 8)

Re clm 46:

- Second biasing member is substantially the same as said biasing member (wherein they are both coil springs disposed within the housing, fig 8)

Re clm 48:

- Pivoting member further comprises a spherical element (2, fig 7)

Re clm 49:

- Spherical element is disposed in a retaining cup (4b, fig 8) and is operable to pivotally move therein

Re clm 50:

- Spherical element is fixed (via the pin, 10, in fig 8) to said lever thereby forming a pivot point on said lever

Re clm 51:

- Spherical element is fixed to said lever by a retaining pin (10, fig 8)

Re clm 52:

- Spherical element forms an integral part of said lever thereby forming a pivot point on said lever (fig 8; It has been held that the term “integral” is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973))

Re clm 53:

- Lever extends through said spherical element to form an arrangement generally coaxial therewith (as shown in fig 8)

Re clm 54:

- Spherical element is formed from a plastic or metallic composition (the element is metallic as denoted by the cross-hatching in fig 8)

Re clm 56:

- Housing having a housing longitudinal axis (4, fig 8)
- Retaining cup (4b, fig 8) disposed within said housing
- Lever (1, fig 8) having a first end, a second end, and lever longitudinal axis, said lever being at least partially disposed within said housing (as shown in fig 8)
- Pivoting member (2 and 3, fig 8) disposed in said retaining cup and being in operational communication with said lever, said pivoting member being adapted to facilitate pivoting of said lever into a plurality positions (as shown in fig 8)
- Biasing member (8, fig 8) disposed proximate said lever, said biasing member selectively applying a biasing force to said lever moving said lever into at least one predetermined position (cl 4, line 4-6)

Re clm 57:

- Said biasing member further includes a first element (21, fig 8) and a second element (9, fig 8) adapted to be displaceable in a direction generally parallel to said longitudinal axis of said lever (wherein the

second stop means is *capable of* being displaced), a third element (26, fig 8) being adapted to be fixed relative to said lever, and a biasing element (19, fig 8) being disposed intermediate said second element and said third element (wherein the biasing element is located between the second element and the third)

Re clm 58:

- Lever extends through said first element, said second element, said third element, and said biasing element from a generally coaxial arrangement therewith (as shown in fig 8)

Re clm 59:

- First element is adapted to engage with a stop member (7, fig 8)

Re clm 60:

- Stop member prevents pivotal displacement of said first element in at least one direction (wherein 7 prevents 21 from sliding up)

Re clm 61:

- Stop member is disposed on an inner wall of said housing (as shown in fig 8)

Re clm 62:

- Stop member is in operational communication with said lever (as shown in fig 8)

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 43, 55, and 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Katayama USP 4543842 as applied to claim 39 above, and further in view of Kessmar USP 4104929.

Katayama discloses all the claimed subject matter as described above.

Although Katayama does indeed disclose a stop means, he does not disclose one disposed on the lever (clm 43) or one disposed on a transmission system (clm 44).

Kessmar teaches a stop means disposed on the lever (55, fig 2) for the purpose of retaining the spring in relation to the lever.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Katayama and use a retaining pin in the lever for the purpose of retaining the spring in relation to the lever.

12. Claims 55 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katayama USP 4543842 as applied to claims 28 and 56 above, respectively, and further in view of Kessmar USP 4104929.

Katayama discloses all the claimed subject matter as described above.

Katayama does not disclose a pivoting member comprising a plurality of pins to engage with each other to form a pivotable arrangement (re clm 55 and 63).

Kessmar teaches a pivoting member (42, fig 2) comprising a plurality of pins (55, 49, fig 2) to engage with each other to form a pivotable arrangement for the purpose of providing a secure fit (cl 4, lines 3-9).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Katayama and use a pivoting member comprising a plurality of pins to engage with each other to form a pivotable arrangement for the purpose of providing a secure fit.

### ***Allowable Subject Matter***

13. Claim 47 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Davis USP 3850047, Anderson et al. USP 5913935, Kim USP 5540114, Lapsley USP 2136697, Feldt et al USP 4569245, and Simmons USP 4333360 all disclose similar devices.

### ***Double Patenting***

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

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1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

16. Claim 28 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 41 of copending Application No. 10/519026. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitation “a biasing member disposed proximate said lever, said biasing member selectively applying a biasing force to said lever moving said lever into at least one biased position” from claim 28 is an obvious variation of the limitation “a resilient member providing resistance to displacement of said lever in at least one of said positions” from claim 41.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan B. Waits whose telephone number is 571 - 270-3664. The examiner can normally be reached on Monday through Friday 7:30 am to 5 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David V. Bruce can be reached on 571-272-2487. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ABW

/David V Bruce/  
Supervisory Patent Examiner, Art Unit 4112